S.B.Civil Revision Petition No.363/2006.

M.S.T.C. Limited.

vs.

M/s. New Janta Gas Service.

Date : 22.2.2007

HON'BLE MR. PRAKASH TATIA, J.

Mr. BR Mehta, for the petitioner.
Mr. RS Choudhary, for the respondent.

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Heard learned counsel for the parties.

The petitioner is aggrieved against the order of the trial court dated 8.3.2006 by which the trial court dismissed the petitioner's application filed under Order 37 Rule 4 CPC for setting aside the decree passed on 9.7.2004.

It is not in dispute that the notices were sent to the petitioner by registered post and that registered post, according to the petitioner, was not served upon the petitioner and the trial court has not received back the postal notices or AD. The trial court drawn the presumption of service because more than 30 days

passed to the registered post. That presumption was treated to be final and conclusive despite the fact that the petitioner denied receipt of notice through post.

In view of the facts of the case, this revision petition deserves to be allowed, hence, allowed and the presumption drawn by the trial court since was rebuttable and has been rebutted by the petitioner, therefore, the application filed by the petitioner is allowed and the ex-parte decree dated 9.7.2004 is set aside.

Both the parties shall remain present before the court below on 28.3.2007.

Record be sent back to the trial court forthwith.

(PRAKASH TATIA), J.

S.Phophaliya